

REMARKS

This paper is submitted in response to the non-final official action dated March 6, 2009, wherein (a) claims 12-29 were pending; (b) claims 18-22 and 27-29 were withdrawn; (c) the examiner requested affirmation of the applicants' previous election of claims 12-17 and 23-26 for prosecution on the merits; (d) claims 12, 14, and 16 were objected to for formal reasons; (e) claims 15, 16, and 25 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite; (f) claims 23 and 26 were rejected under 35 U.S.C. §102(b) as anticipated by Doi (U.S. Patent No. 4,309,585); and (g) claims 12-17 and 23-25 were rejected under 35 U.S.C. §103(a) as obvious over Doi in view of one or more of the following references: Hess (DE 3,119,496), Löffler (WO 98/48679), Yoshida (U.S. Patent No. 4,350,858), and Kaneshiro (U.S. Patent No. 4,967,049).

By way of the foregoing, claims 12, 14, 16, and 23 are currently amended, claims 15, 24, and 25 are canceled, and claims 18-22 and 27-29 are withdrawn. Claim 12 is amended for clarity and to recite the language of previously pending claim 15. Claim 23 is amended to recite the language of previously pending claims 24 and 25. Claims 14 and 16 are merely amended for clarity. No new matter is added.

Claims 12-14, 16-23, and 26-29 are pending, of which 18-22 and 27-29 are withdrawn.

Favorable consideration of the application, as amended, is solicited.

ELECTION/RESTRICTION

The applicants hereby affirm the election of claims 12-17 and 23-26, *without traverse*, made by the applicants' representative, Michael Furmanek, during a telephone conference with the examiner on February 19, 2009.

CLAIM OBJECTIONS

Claims 12 and 14 are amended herein, as suggested by the examiner, to clarify the language objected to in the official action. Moreover, claim 12 is amended to recite "...at least one of the following steps is performed:" for clarity. Regarding

claim 16, the official action states that "reference number 20 is not in parentheses." The applicants respectfully submit that claim 16 does not include a reference number 20.

Accordingly, reconsideration and withdrawal of the outstanding objections to the claims are respectfully requested.

REJECTIONS UNDER 35 U.S.C. §112

Claims 15 and 25 have been canceled, thereby rendering the indefiniteness rejections thereof, moot.

Regarding claim 16, the official action states that the examiner "was unable to reasonably infer how the value to be compared with at least one set point value in order to detect non-insertion of the cooking process probe is determined." Claim 16 is amended herein for clarity. According to amended claim 16, at least one, e.g., one or more, of the variable of the item being cooked, the variation over time, and the derivative is (1) determined and (2) compared with at least one set point value. That is, one variable of the item to be cooked as such can be compared with at least one set point value, and the same holds true for one of the alternative determinants (i.e., the variation over time or the derivative over time). Therefore, the applicants submit that amended claim 16 is clear and definite.

Reconsideration and withdrawal of the outstanding indefiniteness rejections are respectfully requested.

REJECTIONS UNDER 35 U.S.C. §102 AND §103

INDEPENDENT CLAIM 12

Independent claim 12 is directed to a method for conducting a cooking process that comprises, in part, detecting non-insertion of a cooking process probe. As stated above, independent claim 12 is amended herein to recite the features of previously pending claim 15. Therefore, as amended, claim 12 recites automatically monitoring to detect non-insertion of a cooking process probe, wherein the method comprises detecting one or more values ***over a period of time or by forming time derivatives***.

In the official action, the examiner asserted that previously pending claim 15 was obvious over Doi, Hess, and Löffler. The examiner conceded that Doi in view of Hess does not teach detecting as carried out by the formation of time derivatives. Therefore, the examiner relied on Löffler to disclose this feature, and asserted that it would have been obvious to combine Doi, Hess, and Löffler to arrive at the claimed invention. The applicants respectfully disagree.

Löffler teaches a cooking process that may be guided by the formation of time derivatives (See, page 3, lines 1 to 29, of Löffler). The time derivatives, however, are only used to gain information about the item to be cooked. Specifically, the time derivatives are calculated based on measured values of temperature in the item to be cooked. The derivatives are not used to gain information about the probe itself, let alone to monitor and detect non-insertion of the probe, as is recited in amended claim 12. As such, neither Doi, Hess, nor Löffler, alone or in combination, discloses each and every feature recited in amended claim 12.

Moreover, it would not be obvious to modify the cited references to arrive at the subject matter recited in amended claim 12 because there is no suggestion to do so. As mentioned, Löffler teaches using time derivatives to monitor an item to be cooked. As such, when faced with combining Löffler with Doi and/or Hess, a person having ordinary skill in the art would merely calculate time derivatives to gain information about the item to be cooked, and not about the position, i.e., non-insertion, of the probe itself. Therefore, any attempt at formulating an obviousness rejection of amended claim 12 based on Doi, Hess, and Löffler could only be based on hindsight reasoning gleaned from applicants' own disclosure, which is improper, because nothing suggests using time derivatives to monitor probe insertion.

INDEPENDENT CLAIM 23

Independent claim 23 is directed to a method for conducting a cooking process that comprises, in part, automatically monitoring to detect non-insertion of a cooking process probe. As stated above, independent claim 23 is amended herein to recite the features of previously pending claims 24 and 25. More specifically, claim 23 recites the features of previously pending claims 24 and 25, as alternatives.

Therefore, as amended, claim 23 defines the automatic monitoring as including determining (1) whether the cooking process probe is in a standby position in a retaining device, or (2) whether the cooking process probe is in a measuring position in a positioning device which positions the cooking process probe for insertion into the item being cooked.

In the official action, the examiner stated that whether or not the cooking process probe of Doi, Kaneshiro, and/or Hess would be in a standby position in a retaining device, as recited in claim 24, or in a measuring position in a positioning device, as recited in claim 25, can be determined by visual inspection. See, pages 7 and 9 of the official action. As discussed above, however, claim 23 is directed to the automatic monitoring of the probe. Visual inspection of the probe cannot be equated to automatic monitoring because it requires an individual to observe the probe and, as such, is not reliable when the individual is otherwise occupied. Automatic determination of the position of the probe has the clear advantage that no person is needed to observe the probe. Neither Doi, Kaneshiro, nor Hess discloses or even remotely suggests automatically determining the position of the probe, whether it be related to a retaining device or a positioning device. Thus, amended claim 23 cannot be deemed *prima facie* obvious in view of the cited prior art.

Furthermore, amended claim 23 cannot be deemed *prima facie* obvious in view of the cited prior art because neither Doi, Hess, nor Kaneshiro discloses or suggests a retaining device, as recited in previously pending claim 24. In the official action, the examiner asserted that Kaneshiro discloses this feature. The applicants respectfully disagree.

Kaneshiro discloses a flexible, shielded cable 15 that is fastened by an adjusting ring 22 to permit an adjustment of the distance between a food temperature sensing probe 14 and a probe check 16 (See, column 3, lines 30 to 33 and Fig. 2 of Kaneshiro). A person having ordinary skill in the art would not equate the adjusting ring 22 to the retaining device recited in amended claim 23. A retaining device is a device that may hold, i.e., fix, the cooking process probe in a standby position. The adjustment ring 22 of Kaneshiro does not fix the cooking process probe in a definite position, but rather, merely operates to adjust a distance between

the probe 14 and probe check 16. Therefore, Kaneshiro does not disclose a retaining device, as recited in claim 23.

In light of the foregoing, the cited prior art fails to disclose or suggest each and every element recited in amended independent claims 12 and 23.

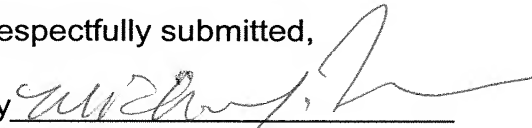
Accordingly, reconsideration and withdrawal of the outstanding anticipation and obviousness rejections are respectfully requested.

CONCLUSION

If there are any issues that the examiner believes may be remedied by telephone conference, please feel free to contact the undersigned at (312) 474-6300.

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Respectfully submitted,

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